

1 falling objects, earthquake forces, malicious mischief, and vandalism covered by the TIE POLICY,
2 and Alice Graham was sued by Carol Kay with respect to operations of the CONDOMINIUM
3 CMOPLEX. The SMOLKERS made a timely claim for property damage covered by the TIE
4 POLICY and tendered defense of the liability lawsuit to TIE. .

5 139. In breach of the TIE POLICY, TIE denied the existence of the Medical Pay
6 provision of the TIE POLICY, TIE denied the existence of the property damage provision of the
7 TIE POLICY and TIE denied the existence of liability coverage under the TIE POLICY, and TIE
8 refused to pay medical benefits owing to the SMOLKERS, refused to pay for repair of property
9 damage and refused to defend Alice Smolker in the suit brought by Carol Kay..

10 140. As a direct and proximate result of TIE's breach of contract the SMOLKERS were
11 not promptly paid insurance benefits owing; the SMOLKERS had to live with the property
12 damage and contamination of the common areas that TIE should have paid to have cleaned up,
13 the SMOLKERS had to provide their own defense to the action brought by Carol Kay against
14 Alice Graham, and the SMOLKERS had to sue TIE in order to obtain benefits owing. The
15 SMOLKERS have been damaged in a sum to be proved at trial in the amount of medical expenses
16 already incurred and in the additional amount of future medical treatments ascertained or
17 unascertained which will be necessary to treat the bodily injury suffered by Gary Smolker, Alice
18 Smolker, Leah Smolker and Judi Smolker, which have not yet been paid by TIE. TIE has been
19 unjustly enriched by the amount of medical expenses TIE should have promptly paid and did not
20 pay promptly, the amount TIE should have paid to repair damage to the common areas, and TIE
21 will be unjustly enriched in the future by an additional sum equal to the amount of future medical
22 expenses to be incurred by the SMOLKERS that TIE should pay but refuses to pay. The amount
23 of unjust enrichment, defense costs, and cost to repair or replace damaged property will be proved
24 at time of trial.

25 141. The SMOLKERS have suffered emotional damages, injury to their health, loss of
26 earnings and loss of earning capacity as a direct and proximate and foreseeable result of TIE's
27 breach of contract in an amount to be proved at time of trial.

28

1 WHEREFORE, cross-complainants Gary Smolker and Alice Smolker pray judgment as
2 hereinafter set forth.

3 **TWENTY-FIFTH CAUSE OF ACTION FOR BREACH**
4 **OF DUTY OF GOOD FAITH AND FAIR DEALING AGAINST TIE**

5 142. The SMOLKERS incorporate herein by reference as though fully set forth herein
6 Paragraphs 135 through 141 of this cross-complaint with the same force and effect as though said
7 paragraphs were set forth fully at this point.

8 143. Implied in the TIE POLICY are covenants by TIE that TIE would act in good faith
9 and deal fairly, only engage in fair practices in dealing with the SMOLKERS and would treat the
10 SMOLKERS with decency and humanity and not abuse its discretionary power and authority
11 when processing the SMOLKERS' claim for medical benefits, property damage and provision of
12 a defense to a liability lawsuit, atnd would do nothing to interfere with the SMOLKERS' rights to
13 receive medical payment benefits, or any other benefits under the TIE POLICY.

14 144. At all times since receipt of notice of the contamination problem in the SMOLKERS
15 home, TIE has known the SMOLKERS were entitled to medical payments under the TIE
16 POLICY and that TIE had a duty to disclose benefits owing under the TIE POLICY to the
17 SMOLKERS. But, TIE refused to disclose benefits owing to the SMOLKERS, and without
18 reasonable cause denied the SMOLKERS' claims. Upon receipt of the SMOLKERS' claim for
19 payment of medical expenses, for property damage and tender of defense TIE knew that the
20 SMOLKERS were entitled to payment of medical expenses, a defense of the Carol Kay lawsuit,
21 and repair and clean up of the pesticide contamination in the common areas and repair of equake
22 damage and wind damage and explosiion damage and falling objects damage, and wrongfully,
23 deliberately and without just cause refused to pay any of the SMOLKERS' medical expenses, and
24 refused to offer a defense to the Carol Kay lawsuit, and refused to repair any property damage
25 and forced the SMOLKERS to sue TIE in order to obtain medical payment benefits owing to the
26 SMOLKERS, defendse owing to Alice Graham and repair of property damage, in breach of TIE's
27 covenant of good faith. In further breach of TIE's covenant of good faith, TIE has informed the
28

1 SMOLKERS that the TIE would promptly take care of the problem in the SMOLKERS' home
 2 and take care of it, and demanded that the SMOLKERS not alter the condition of the
 3 SMOLKERS' home until TIE was done inspecting and testing the SMOLKERS' home, when
 4 TIE had no intention to promptly investigate the contamination problem in the SMOLKERS'
 5 home or to take care of it. Although repeatedly invited to do so, TIE never inspected or tested
 6 the SMOLKERS' home. TIE forced the SMOLKERS to bring and prosecute a lawsuit to receive
 7 any payment for medical expenses, etc. from TIE.

8 145. As a direct and proximate result of TIE's bad faith conduct, and breach of fiduciary
 9 duties, the SMOLKERS have suffered compensable losses, including benefits withheld, physical
 10 injury, property damage, additional medical expenses, loss of strength, loss of earning capacity
 11 and earnings, embarrassment and humiliation, anxiety and frustration, and severe mental and
 12 emotional distress and discomfort, all to the SMOLKERS damage in amounts not fully
 13 ascertainable but within the jurisdiction of this court in an amount to be proved at the time of trial.

14 146. Cross-defendant TIE's conduct described herein was done willfully with a conscious
 15 disregard of the SMOLKERS' rights and with intent to vex, cause unjust hardship to, injure and
 16 annoy the SMOLKERS, such as to constitute oppression, fraud and malice under California Civil
 17 Code Section 3294 entitling the SMOLKERS, and each of them, to punitive damages in an
 18 amount appropriate to punish and set an example of cross-defendant TIE by means of
 19 punishment.

20 **WHEREFORE**, cross-complainants Gary Smolker and Alice Smolker pray judgment as
 21 hereinafter set forth.

22 **TWENTY-SIXTH CAUSE OF ACTION**
 23 **FOR BREACH OF CONTRACT AGAINST TIG**

24 147. The SMOLKERS incorporate herein by reference as through fully set forth herein
 25 Paragraph 120 of this cross-complaint with the same force as if fully set forth at this point.

26 148. While the TIG policies described above were in effect, Gary Smolker and Alice
 27 Smolker incurred medical, x-ray, surgical, dental and hospital expenses for bodily injuries,
 28

1 sustained while in their insured automobiles as a result of an accident, and property damage to
2 their automobiles, covered by the TIG auto policy and made a timely claim for medical benefits
3 owing to Gary Smolker and Alice Smolker under the TIG auto policy to TIG, and for proerpty
4 damgae to their automobile, and damage to their personal property covered by their homeowners
5 policy and tendered defense of the Carol Kay lawsuit to TIG.

6 149. In breach of the TIG policies, TIG denied the existence of the Medical Pay provision
7 of the TIG auto policy and the property damage coverage of the homeowner policy, the
8 earthquake damage coverage of the earthquake policy and the liability coverage under the
9 homeowner and umbrella policies issued to the SMOLKKERS by TIG. TIG refused to pay
10 medical benefits owing to the SMOLKERS.

11 150. As a direct and proximate result of TIG's breach of contract the SMOLKERS were
12 not promptly paid insurance benefits owing; the SMOLKERS had to sue TIG in order to obtain
13 benefits owing; and, the SMOLKERS have been damaged in a sum to be proved at trial in the
14 amount of medical expenses already incurred and in the additional amount of future medical
15 treatments ascertained or unascertained which will be necessary to treat the bodily injury suffered
16 by Gary Smolker, Alice Smolker, Leah Smolker and Judi Smolker, which have not yet been paid
17 by TIG, and the SMOLKERS suffered physical injury to their bodies and property. TIG has been
18 unjustly enriched by the amount of medical expenses TIG should have promptly paid and did not
19 pay promptly, the amount TIG should have paid for the SMOLKERS to move out and live
20 somewhere else, the amount TIG should have paid to replace or repair the damaged property
21 insured under the TIG policies and sturctural enigneering fees and defense costs for defendaing
22 the lawsuit brought by Carol Kay against Alice Grahm. TIG will be unjustly enriched in the future
23 by an additional sum equal to the amount of future medical expenses to be incurred by the
24 SMOLKERS that TIG should pay but refuses to pay. The amount of unjust enrichment will be
25 proved at time of trial.

1 151. The SMOLKERS have suffered bodily injures, loss of strength, emotional damages,
2 and loss of earnings and earning capacity as a direct and proximate and foreseeable result of
3 TIG's breach of contract in an amount to be proved at time of trial.

4 **WHEREFORE**, cross-complainants Gary Smolker and Alice Smolker pray judgment as
5 hereinafter set forth.

6 **TWENTY-SEVENTH CAUSE OF ACTION FOR BREACH**
7 **OF DUTY OF GOOD FAITH AND FAIR DEALING AGAINST CAINCO**

8 152. The SMOLKERS incorporate herein by reference as though fully set forth herein
9 Paragraphs 147 through 151 of this cross-complaint with the same force and effect as though said
10 paragraphs were set forth fully at this point.

11 153. Implied in the TIG policies are covenants by TIG that TIG would act in good faith
12 and deal fairly, only engage in fair practices in dealing with the SMOLKERS and would treat the
13 SMOLKERS with decency and humanity and not abuse its discretionary power and authority
14 when processing the SMOLKERS' claim for medical benefits, property damage, and relocation
15 expenses, and would do nothing to interfere with the SMOLKERS' rights to benefits under the
16 TIG policies..

17 154. At all times since receipt of notice of the contamination problem in the SMOLKERS
18 home, TIG has known the SMOLKERS were entitled to medical payments, relocation costs,
19 replacement of contaminated furnishings and defense of the Carol Kay lawsuit under the TIG
20 policies issued to the SMOLKERS and that TIG had a duty to disclose benefits owing under the
21 TIG policies to the SMOLKERS and to promptly and prudently investigate the SMOLKERS'
22 claims. But, TIG refused to and refused to acknowledge benefits owing to the SMOLKERS..
23 Upon receipt of the SMOLKERS' claim for payment of medical expenses, TIG knew that the
24 SMOLKERS were entitled to payment of medical expenses and wrongfully, deliberately and
25 without just cause refused to pay any of the SMOLKERS' medical expenses, and refused to pay
26 for replacement of the SMOLKERS contaminated property and relocation living expenses nad
27 structural engineering expenses and forced the SMOLKERS to sue TIG in order to obtain
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1 medical payment and other benefits owing to the SMOLKERS, in breach of TIG's covenant of
 2 good faith. In further breach of TIG's covenant of good faith, TIG had informed the
 3 SMOLKERS that the TIG would promptly investigate the problem in the SMOLKERS' home
 4 and take care of it, but instead unreasonably delayed investigating the SMOLKERS' claim, sent
 5 out people who were not qualified to investigate the SMOLKERS' claim and denied the
 6 SMOLKERS' claim. and prosecute a lawsuit to receive any payment for benefits owing to the
 7 SMOKERS from TIG.

8 155. As a direct and proximate result of TIG's bad faith conduct, and breach of fiduciary
 9 duties, the SMOLKERS have suffered compensable losses, including benefits withheld, physical
 10 injury, property damage, additional medical expenses, loss of strength, loss of earning capacity
 11 and earnings, embarrassment and humiliation, anxiety and frustration, and severe mental and
 12 emotional distress and discomfort, all to the SMOLKERS damage in amounts not fully
 13 ascertainable but within the jurisdiction of this court in an amount to be proved at the time of trial.

14 156. Cross-defendant TIG's conduct described herein was done willfully with a conscious
 15 disregard of the SMOLKERS' rights and with intent to vex, cause unjust hardship to, injure and
 16 annoy the SMOLKERS, such as to constitute oppression, fraud and malice under California Civil
 17 Code Section 3294 entitling the SMOLKERS, and each of them, to punitive damages in an
 18 amount appropriate to punish and set an example of cross-defendant TIG by means of
 19 punishment.

20 WHEREFORE, cross-complainants Gary Smolker and Alice Smolker pray judgment as
 21 hereinafter set forth.

22 **TWENTY-EIGHT CAUSE OF ACTION**
 23 **FOR BREACH OF CONTRACT AGAINST FRONTIER**

24 157. FRONTIER knows what the contract is, what its breach is and what damages are
 25 being claimed by the SMOLKERS. The court's page limit does not allow setting forth allegations
 26 concerning this cause of action. The court's time limit did not allow enough time to plead this
 27 cause of action in any further detail or to edit this fifth amended cross-complaint.

1 **WHEREFORE**, cross-complainants Gary Smolker and Alice Smolker pray judgment as
2 hereinafter set forth.

3 **TWENTY-NINETH CAUSE OF ACTION**
4 **FOR BREACH OF CONTRACT AGAINST RELIANCE**

5 158. RELIANCE knows what the contract is, what its breach is and what damages are
6 being claimed by the SMOLKERS. The court's page limit does not allow setting forth allegations
7 concerning this cause of action. The court's time limit did not allow enough time to plead this
8 cause of action in any further detail or to edit this fifth amended cross-complaint.

9 **WHEREFORE**, cross-complainants Gary Smolker and Alice Smolker pray judgment as
10 hereinafter set forth.

11 **THIRTIETH CAUSE OF ACTION**
12 **FOR FRAUD AGAINST MORRIS, HOME SAVING, GRACE, GRACE DAVISON,**
13 **TIE, FIG, COREGIS, CAINCO, CIC, TIG**

14 159. The cross-defendants named in this cause of action know what the fraud is, what its
15 and what damages are being claimed by the SMOLKERS. The court's page limit does not allow
16 setting forth allegations concerning this cause of action. The court's time limit did not allow
17 enough time to plead this cause of action in any further detail or to edit this fifth amended cross-
18 complaint.

19 **WHEREFORE**, cross-complainants Gary Smolker and Alice Smolker pray judgment as
20 hereinafter set forth.

21 **THIRTY FIRST CAUSE OF ACTION**
22 **FOR INTERFERENCE AGAINST MORRIS, HOME SAVING, CAINCO, COREGIS,**
23 **CIC, TIE, FIG, GRACE AND GRACE DAVISON**

24 160. The cross-defendants named in this cause of action know what the interference is, and
25 what damages are being claimed by the SMOLKERS. The court's page limit does not allow
26 setting forth allegations concerning this cause of action. The court's time limit did not allow
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1 enough time to plead this cause of action in any further detail or to edit this fifth amended cross-
2 complaint.

3 **WHEREFORE**, cross-complainants Gary Smolker and Alice Smolker pray judgment as
4 hereinafter set forth.

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6
7 ON ALL CAUSES OF ACTION

8 1. For general damages and special damages according to proof in an amount in excess of
9 the minimum jurisdiction of the above entitled court.

10 2. For damages for past and future medical and dental related expenses according to
11 proof at time of trial.

12 3. For damages to personal property and to real property, and for loss of use of property
13 according to proof at time of trial.

14 4. For exemplary damages and punitive damages in an amount the court deems just and
15 reasonable.

16 5. Prejudgment interest as allowed by law.

17 6. Costs of suit herein.

18 7. Such other and further relief which the court deems just and proper.

19 8. For an order directing the owners of each condominium in the CONDOMINIUM
20 COMPLEX to pay a pro-rata contribute share of the costs incurred by cross-complainants and a
21 prorata contributive share of the reasonable value of cross-complainants services in prosecuting
22 actions seeking order directing the manner and method to be followed to abate the nuisance(s)
23 and dangerous conditions existing at the CONDOMINIUM COMPLEX, to stop waste from
24 continuing at the CONDOMINIUM COMPLEX, and for recovery of costs necessary for repair or
25 replacement of contaminated property from HOME SAVING, GRACE, GRACE DAVISON,
26 TIE, MORRIS, and HOME SAVING, and that a lien be impressed on each owner's interest in the
27 common areas to secure the payment of each owner's share and that such lien be foreclosed by
28

1 the court.

2 9. For an order directing each owner, GRACE, GRACE DAVISON, HOME SAVING,
3 MORRIS, and TIE to do whatever the court deems necessary to abate the nuisance and illegal
4 condition of having an unregistered poison, termite infestations and termite damages in the
5 common areas..

6 Dated: August 12, 1999.

7 Law Offices of Smolker & Graham

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10 Gary S. Smolker

11 Attorneys for Cross-complainants Gary and Alice Smolker
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DECLARATION OF SERVICE BY MAIL

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 4720 Lincoln Blvd., Suite 250, Marina del Rey, California 90292.

On August 12, 1999, I served the attached document described as follows:

FIFTH AMENDED CROSS-COMPLAINT

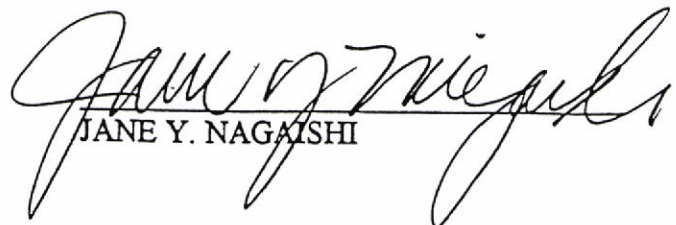
on the interested parties in this action by facsimile for the fax number(s) listed, and by causing a true copy thereof enclosed in a sealed envelope(s), addressed as follows to be placed in the U.S. Mail at Los Angeles, California:

See Attached Service List

I am "readily familiar" with the firm's practice of collection and processing of correspondence for mailing. Under that practice, correspondence placed in envelopes is deposited in the U.S. postal service on the same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I know the envelope was sealed and, with postage prepaid, placed for collection and mailing on this date, following ordinary business practice, in the United States Mail at Los Angeles, California. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 12, 1999 at Marina del Rey, California.


JANE Y. NAGAISHI

ORIGINAL FILED

JUL 02 1998

LOS ANGELES
SUPERIOR COURT

HOLLINS, SCHECHTER & FEINSTEIN
ANDREW S. HOLLINS, #80194
THOMAS M. CONDAS, #113919
BRYAN R. BUSH, #134449
505 South Main Street, 12th Floor
Orange, CA 92856
(714) 558-9119

Attorneys for cross-defendant
and cross-complainant, PACIFIC
VILLAS HOMEOWNERS' ASSOCIATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

VIA FAX

TIG INSURANCE COMPANY, a
California Corporation,
Plaintiff,

CASE NO: BC 173952

Honorable Dzintra Janavs, Judge
Department 15

v.

GARY SMOLKER, an individual,
and ALICE SMOLKER, an
individual, and DOES 1-10,
inclusive,

CROSS-COMPLAINT OF PACIFIC
VILLAS HOMEOWNERS' ASSOCIATION
FOR:

1. EQUITABLE INDEMNITY;
2. COMPARATIVE INDEMNITY;
3. TOTAL INDEMNITY;
4. DECLARATORY RELIEF;
5. STRICT LIABILITY
6. IMPLIED WARRANTY OF FITNESS;
7. NEGLIGENCE;
8. NUISANCE; AND
9. BREACH OF CONTRACT

Defendants.

GARY SMOLKER and ALICE
SMOLKER,

Cross-Complainants,

v.

TRIAL DATE: NONE

HOME SAVINGS TERMITE CONTROL,
INC.; W.F. MORRIS; RIKK
THOMPSON; W.R. GRACE & CO.;
GRACE DAVISON; ALBERT J.
COSTELLO; JAMES R. HYDE;
MATTHEW JOHN FREDERICKS;
VIRGINIA K. CIPRIANO; JOSEPH
A. BAILEY II; CAROL D. KAY,
TRUST; CAROL D. KAY REVOCABLE
1989 TRUST; LANCE J. ROBBINS;
GERALD W. IVORY; ANGELA JORDAN
VERDUN; PACIFIC VILLAS
HOMEOWNERS' ASSOCIATION; TRUCK

1 Cross-complainant, PACIFIC VILLAS HOMEOWNERS' ASSOCIATION,
2 for causes of action against the cross-defendants, and each of
3 them, alleges as follows:

4 FIRST CAUSE OF ACTION

5 1. Cross-complainant, PACIFIC VILLAS HOMEOWNERS'
6 ASSOCIATION, (hereinafter referred to as PACIFIC VILLAS), was at
7 all times mentioned herein, located in the County of Los Angeles,
8 in the state of California. PACIFIC VILLAS was and is an
9 association as defined in California Civil Code, section 1351(a),
10 established to manage a certain condominium project as defined in
11 California Civil Code, section 1351(f). As such PACIFIC VILLAS
12 brings this action not only on its individual capacity, but also
13 pursuant to California Code of Civil Procedure, section 383 as
14 the real party in interest, without joining with its members, in
15 matters pertaining to enforcement of the governing documents, for
16 damage to the common areas, for damage to the separate interests
17 which PACIFIC VILLAS is obligated to maintain or repair, and for
18 damages to the separate interests which arise out of, or are
19 integrally related to, damages to the common areas of separate
20 interests that PACIFIC VILLAS is obligated to maintain or repair

21 2. The names and capacities of cross-defendants, DOES 1 :
22 through 100, inclusive, are unknown at this time, and cross-
23 complainant therefore sues said cross-defendants by such
24 fictitious names. Cross-complainant will ask leave of the Court
25 to amend its cross-complaint to show the true names and
26 capacities of said cross-defendants when the same have been
27 ascertained.

1 3. Cross-complainant is informed and believes, and upon
2 such information and belief, alleges that each of said cross-
3 defendants designated herein as a DOE was in some manner
4 negligently or actively responsible for the loss and damages
5 sustained by the cross-complainant herein as hereafter provided,
6 and each of the cross-defendants were, and were at all times,
7 mentioned in plaintiff's complaint the agents, servant and
8 employee of the remaining cross-defendants, herein, and was at
9 all times mentioned in plaintiff's complaint, acting within the
10 course and scope of said agency, service and employment.

11 4. Cross-defendants, HOME SAVINGS TERMITE CONTROL, W.F.
12 MORRIS and RIKK THOMPSON and DOES 1 through 100, inclusive, were
13 corporations, businesses, partnerships, associations or
14 individuals doing business or residing within the state of
15 California.

16 5. The cross-complaint of GARY and ALICE SMOLKER in the
17 underlying action alleges damages against this cross-complainant
18 as alleged therein. The SMOLKERS' cross-complaint is referred to
19 and incorporated herein by reference as though set forth at
20 length at this place for reference purposes only.

21 6. Cross-complainant has answered the cross-complaint in
22 the underlying action and has denied, and continues to deny the
23 allegations contained therein.

24 7. Cross-complainant, PACIFIC VILLAS, is informed and
25 believes, and thereon alleges that cross-defendants, HOME SAVING
26 TERMITE CONTROL, W.F. MORRIS and RIKK THOMPSON and DOES 1 throug
27 100, inclusive, equally or partially caused or contributed to th
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1 injuries or damages to the SMOLKERS. That, based upon the
2 conduct by the cross-defendants, and each of them, are thereby
3 obligated to indemnify cross-complainant. Cross-defendants, HOME
4 SAVINGS TERMITE CONTROL, W.F. MORRIS and RIKK THOMPSON and DOES 1
5 through 100, inclusive, have refused, and continue to refuse,
6 such indemnity.

7 8. If it be found that cross-complainant was negligent or
8 breached any duty of the SMOLKERS which cross-complainant has
9 denied and continues to deny, then cross-complainant alleges that
10 its negligence or other duty, if any, was vicarious, passive and
11 secondary, and that the negligence or other breach of duty or
12 responsibility of cross-defendants, and each of them, for the
13 incident alleged in plaintiff's complaint, was active, primary
14 and affirmative; by reason of the foregoing, cross-complainant
15 herein will be thereby entitled to indemnification by the cross-
16 defendants, and each of them, for any and all amounts which may
17 in good faith be paid by way of compromise, settlement or
18 judgment, and further will be entitled to costs and expenses in
19 connection therewith; this cross-complainant has not yet
20 ascertained the full amount of said damages, and will ask leave
21 of the Court to amend this plea when the same have been
22 ascertained.

23 SECOND CAUSE OF ACTION

24 (AS TO CROSS-DEFENDANTS HOME SAVINGS TERMITE CONTROL, W.F. MORRIS
25 AND RIKK THOMPSON AND DOES 1 THROUGH 100, INCLUSIVE)

26 9. Cross-complainant refers to paragraphs one through
27 eight of the First Cause of Action, and by this reference,
28

1 incorporates the same herein with the same force and effect as
2 though fully set forth in this place.

3 10. That cross-complainant is not singularly, uniquely, or
4 totally liable for any damages incurred by the SMOLKERS in the
5 aforesaid incident. That if cross-complainant is held liable in
6 the underlying litigation, which liability is specifically
7 denied, cross-complainant is either not responsible in any
8 fashion, or is only partially responsible for the alleged
9 injuries and damages suffered or sustained by the SMOLKERS. That
10 the distribution of responsibility should be apportioned among
11 the cross-complainant and cross-defendants, and each of them, on
12 the basis of their proportionate share.

13 11. An actual controversy has arisen and now exists between
14 the cross-complainant and cross-defendants, and each of them,
15 regarding the rights, duties and liabilities of each party with
16 regard to the alleged incident giving rise to this lawsuit.
17 Cross-complainant contends that if, despite its denial of the
18 allegations of the SMOLKERS' cross-complaint herein, the SMOLKERS
19 should nevertheless recover judgment against this cross-
20 complainant, judgment will be based upon the findings of
21 wrongdoing as hereinabove set forth on the part of the cross-
22 defendants, and each of them, and cross-complainant should be
23 entitled to indemnification in an amount proportionate to the
24 comparative responsibility and degree of fault on each of said
25 cross-defendants.

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THIRD CAUSE OF ACTION

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2 (AS TO CROSS-DEFENDANTS HOME SAVINGS TERMITE CONTROL, W.F. MORRIS
3 AND RIKK THOMPSON AND DOES 1 THROUGH 100, INCLUSIVE)

4 12. Cross-complainant refers to paragraphs one through
5 eight of the First Cause of Action, and by this reference,
6 incorporates the same herein with the same force and effect as
7 though fully set forth in this place.

8 13. Cross-complainant, by law and equity should be entitled
9 to total indemnification against cross-defendants for any
10 judgment adverse to this cross-complainant.

FOURTH CAUSE OF ACTION

11
12 (AS TO CROSS-DEFENDANTS HOME SAVINGS TERMITE CONTROL, W.F. MORRIS
13 AND RIKK THOMPSON AND DOES 1 THROUGH 100, INCLUSIVE)

14 14. Cross-complainant refers to paragraphs one through
15 eight of the first cause of action, and by this reference,
16 incorporates the same herein with the same force and effect as
17 though fully set forth in this place.

18 15. Cross-complainant may have to bear a loss which, in
19 equity and good conscience, they should not be faced with by
20 virtue of the conduct of the cross-defendants, and each of them,
21 if the allegations of the SMOLKERS' complaint and the allegation
22 of cross-complainant's cross-complaint for indemnity are found to
23 be true.

24 16. A dispute has arisen and an actual controversy exists
25 between the cross-complainant herein and the cross-defendants,
26 and each of them, concerning their respective rights, duties and
27 obligations of the cross-defendants, and each of them, to whole

1 or partially indemnify cross-complainant for any verdict or
2 judgment rendered against them. This cross-complainant requests
3 a declaration of rights and duties of the cross-defendants, and
4 each of them, to this cross-complainant.

5 17. Insofar as the conduct of the cross-defendants herein,
6 and each of them, is determined to have been a proximate cause of
7 the injuries and damages alleged by the SMOLKERS, if any exist,
8 then this cross-complainant is entitled to a declaration that it
9 be indemnified by cross-defendants, and each of them, in an
10 amount equal to that amount of which their conduct or fault
11 contributed to plaintiffs' injuries or damages, if any, and in an
12 amount which is proportionate to each of the cross-defendants'
13 respective allocable fault.

14 FIFTH CAUSE OF ACTION

15 (AS TO CROSS-DEFENDANTS HOME SAVINGS TERMITE CONTROL,
16 W.F. MORRIS AND RIKK THOMPSON AND DOES 1 THROUGH 100, INCLUSIVE)

17 18. Cross-complainant refers to paragraphs one through
18 seventeen, and by this reference, incorporates the same herein
19 with the same force and effect as though fully set forth in this
20 place.

21 19. Cross-complainant is informed and believes and based
22 thereon alleges that cross-defendants, and each of them, are and
23 at all times mentioned herein engaged in the business as a
24 licensed contractor licensed as a pest control operator in and
25 for the State of California.

26 20. Cross-complainant is informed and believes and based
27 thereon alleges that in or about October 1996 cross-defendants,
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1 and each of them agreed to sell, apply, and install pesticides
2 and/or pest control systems upon the residential units and common
3 areas of Pacific Villas and in fact sold, implied and installed
4 said pesticides and/or pest control systems, for which cross-
5 complainant paid cross-defendants the approximate sum of \$7,952.

6 21. Cross-complainant is informed and believes and based
7 thereon alleges that the pesticides and/or pest control system
8 and/or the application and installation of the pesticides and/or
9 pest control system by cross-defendants, and each of them, were
10 defective.

11 22. Cross-complainant is informed and believes and based
12 thereon alleges that as a proximate and direct result of the
13 defects in the pesticides and/or pest control system, and/or the
14 application or installation thereof, cross-complainants will be
15 required to incur expenses to evaluate, correct, repair, replace
16 and reconstruct defective and injured improvements in and about
17 the common areas, together with a loss of use thereof, to its
18 damage in the sum to be stated according to proof.

19 23. Cross-complainant is informed and believes and based
20 thereon alleges that as a further proximate and direct result of
21 the defects and injuries as aforesaid, the property values as
22 Pacific Villas have diminished and that a stigma has attached
23 said to property, all to the detriment of cross-complainants in
24 an amount according to proof.

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SIXTH CAUSE OF ACTION

1 (AS TO CROSS-DEFENDANTS HOME SAVINGS TERMITE CONTROL,
2
3 W.F. MORRIS AND RIKK THOMPSON AND DOES 1 THROUGH 100, INCLUSIVE)

4 24. Cross-complainant refers to paragraphs one through
5 twenty-three, and by this reference, incorporates the same herein
6 with the same force and effect as though fully set forth in this
7 place.

8 25. Cross-complainant is informed and believes and based
9 thereon alleges that at all relevant times cross-defendants, and
10 each of them, knew or should have known that cross-complainant
11 would rely upon cross-defendants and each of them and upon their
12 skill and judgment in the selection, application and installation
13 of pesticides and/or pest control systems and to provide
14 components and materials fit for their particular purpose without
15 injuring the property and/or residence of Pacific Villas, and
16 cross-complainant did so rely upon cross-defendants skill and
17 judgment.

18 26. Cross-defendant and each of them, impliedly warranted
19 that the pesticides and/or pest control system would be fit for
20 the purposes for which they are normally and reasonably used, an
21 without creating an unreasonable risk of harm to cross-
22 complainant and/or its members.

23 27. Cross-complainant is informed and believes and based
24 thereon alleges that the pesticides and/or pest control system
25 sold, applied and installed by cross-defendants, and each of
26 them, are, and at all relevant times have been, materially
27 defective aforesaid.

1 28. Cross-complainant is informed and believes and based
2 upon thereon alleges that as a proximate and direct result of
3 such breach of the implied warranty of fitness for the particular
4 purpose for which said pesticides and/or pesticide control
5 systems is normally and reasonably used, cross-complainant has
6 sustained and will sustain damages as alleged in paragraphs 22
7 and 23 above.

8 SEVENTH CAUSE OF ACTION

9 (AS TO CROSS-DEFENDANTS HOME SAVINGS TERMITE CONTROL,
10 W.F. MORRIS AND RIKK THOMPSON AND DOES 1 THROUGH 100, INCLUSIVE)

11 29. Cross-complainant refers to paragraphs one through
12 twenty-eight, and by this reference, incorporates the same herein
13 with the same force and effect as though fully set forth in this
14 place.

15 30. Cross-complainant is informed and believes and based
16 thereon alleges that all relevant times cross-defendants and each
17 of them, were under a duty to exercise reasonable care in the
18 selecting, selling, applying and installation of the pesticide
19 and/or pest control systems, including the duty to comply with
20 applicable State and Federal Regulations regarding pesticide/pest
21 control system selection, application and installation, and the
22 duty to provide all labor and materials in a good and workman
23 like manner.

24 31. Cross-complainant is informed and believes and based
25 thereon alleges that cross-defendants, and each of them, breache
26 their respective duties of care to cross-complainant by
27 negligently and carelessly failing to use reasonable care in the
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1 selection, application and installation of the pesticides/pest
2 control system at Pacific Villa, and by negligently and
3 carelessly failing to comply with applicable state and federal
4 regulations and relevant customs and practices relating and
5 pertaining to the sale, application and installation of
6 pesticides and/or pest control systems.

7 32. Cross-complainant is informed and believes and based
8 thereon alleges that the negligence of cross-defendants and each
9 of them actually and proximately caused the defects, deficiencies
10 and injuries in and about the common areas of Pacific Villas, as
11 alleged herein above.

12 33. Cross-complainant is informed and believes and based
13 thereon alleges that as a direct and proximate result of the
14 negligence of the cross-defendants, and each of them, cross-
15 complainant has sustained and will sustain damages as alleged in
16 paragraphs 22 and 23 above.

17 EIGHTH CAUSE OF ACTION

18 (AS TO CROSS-DEFENDANTS' HOME SAVINGS TERMITE CONTROL,
19 W.F. MORRIS AND RIKK THOMPSON AND DOES 1 THROUGH 100, INCLUSIVE)

20 34. Cross-complainant refers to paragraphs one through
21 three-three, and by this reference, incorporates the same herein
22 with the same force and effect as though fully set forth in this
23 place.

24 35. Cross-complainant is informed and believes and based
25 thereon alleges that each of the cross-defendants knew, or the
26 exercise of reasonable diligence should have known that defects
27 in the selection, sale, application and installation of
28

1 pesticides and/or pest control system, as aforesaid, has caused
2 and will continue to cause, damage and injury to cross-
3 complainant.

4 36. Cross-complainant is informed and believes and based
5 thereon alleges that the failures, deficiencies and defects
6 herein alleged, constitute a nuisance within the meaning of
7 section 3479 of California Civil Code, in that the property
8 values of Pacific Villas have diminished, stigma to the property
9 has attached, and that said nuisance creates and obstruction to
10 the free use of the property and interferes with cross-
11 complainant's comfortable enjoyment and use of its property.

12 37. Cross-complainant is informed and believes and based
13 thereon alleges that the cross-defendants, and each of them, by
14 their conduct and/or failure to act, created, maintained and/or
15 concealed a nuisance and have not taken reasonable steps to abate
16 said nuisance, or to mitigate the potential future damage caused
17 by said nuisance, although requested to do so.

18 38. Cross-complainant is informed and believes and based
19 thereon alleges that as a proximate and direct result of the
20 nuisance caused by defendants as herein alleged, cross-
21 complainant has sustained, and will continue to sustain, damages
22 as alleged in paragraphs 22 and 23 above.

23 NINTH CAUSE OF ACTION

24 (AS TO CROSS-DEFENDANTS HOME SAVINGS TERMITE CONTROL,
25 W.F. MORRIS AND RIKK THOMPSON AND DOES 1 THROUGH 100, INCLUSIVE

26 39. Cross-complainant refers to paragraphs one through
27 thirty-eight, and by this reference, incorporates the same herei

1 with the same force and effect as though fully set forth in this
2 place.

3 40. Cross-complainant is informed and believes and based
4 thereon alleges that except as excused y the wrongful conduct of
5 cross-defendant and each of the, cross-complainant has performed
6 all conditions and covenants required to be performed on its
7 part.

8 41. Cross-complainant is informed and believes and based
9 thereon alleges that within two years of the filing of this
10 action, cross-defendants and each of them, breached their
11 agreement by failing to property and/or adequately select, sell,
12 apply and install the pesticides and/or pest control system at
13 Pacific Villas.

14 42. Cross-complainant is informed and believes and based
15 thereon alleges that as a direct and proximate result of the
16 breach by cross-defendants and each of them, cross-complainant
17 has sustained and will sustain damages as alleged in paragraphs
18 22 and 23 above.

19

20 WHEREFORE, cross-complainant prays for judgment against the
21 cross-defendants, and each of them, as follows:

22 ON CAUSES OF ACTION ONE THROUGH FOUR, INCLUSIVE

23 1. If it be found that cross-complainant is liable for any
24 judgment in favor of the plaintiff herein, that total judgment in
25 the same amount be rendered in favor of the cross-complainant
26 against the cross-defendants;

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1 2. For an order that the cross-defendants have a duty to
2 indemnify the cross-complainant;

3 3. That if cross-complainant is held liable to the
4 plaintiff, then judgment be rendered against cross-defendants,
5 and each of them, determining the respective responsibility of
6 the cross-defendants, and each of them, for the incident;

7 4. That judgment be entered indemnifying cross-complainant
8 for the percentage of plaintiff's judgment which is proportionate
9 and allocable to the comparative responsibility of the cross-
10 defendants, and each of them;

11 5. For interests provide by law;

12 6. For damages according to proof;

13 7. For costs of suit incurred herein; and

14 8. For such other and further relief as the Court deems
15 just and proper.

16 ON CAUSES OF ACTION FIVE THROUGH NINE, INCLUSIVE

17 9. For general and compensatory damages according to the
18 proof at the time of trial and in an amount in excess of the
19 minimum jurisdiction of this court;

20 10. For interest provided by law;

21 11. For cost of suit incurred herein; and,

22 ///

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1 12. For such other and further relief as the court deems
2 just and proper.

3 DATED: June 30, 1998

HOLLINS, SCHECHTER & FEINSTEIN

4
5 BY: Thomas M. Condas
6 THOMAS M. CONDAS
7 Attorneys for Cross-
8 Defendant and Cross-
9 Complainant, PACIFIC VILLAS
10 HOMEOWNERS' ASSOCIATION
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PROOF OF SERVICE

(1013a(3) Code Civ. Proc. Revised 5/1/88)

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the county of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 505 S. Main Street, 12th Floor, Orange, California 92856.

On July 2, 1998, I served the foregoing document described as CROSS-COMPLAINT OF PACIFIC VILLAS HOMEOWNERS' ASSOCIATION FOR EQUITABLE INDEMNITY; COMPARATIVE INDEMNITY; TOTAL INDEMNITY; DECLARATORY RELIEF; STRICT LIABILITY; IMPLIED WARRANTY OF FITNESS; NEGLIGENCE; NUISANCE; AND, BREACH OF CONTRACT on the interested parties in this action,

(X) by placing true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:

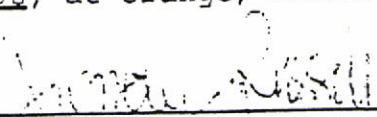
() by placing () the original () a true copy thereof enclosed in sealed envelopes addressed as follows:

() by personal delivery to:

(X) by mail as follows: I am "readily familiar" with the firm's practice of collecting and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Orange, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

(X) (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 2, 1998, at Orange, California.


GABRIELLE RUSSELL

1 Case Name: TIG INSURANCE V. SMOLKER
 Case No.: BC 173952
 2 Our File No.: FCLD 8257

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COMPANY and GRACE DAVIDSON

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- 2 Playa del Rey, CA 90293
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- 14 William E. Davis III, Esq.
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- 16 Sally L. Schubert, Esq.
Dean & Associates
17 225 S. Lake Avenue, Suite 1190
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- 19 William D. Beck, Esq.
Johnson & Beck
20 1680 N. Vine Street, Suite 100
Hollywood, CA 90028
- 21
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- 24
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- 28

982(a)(15.4)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): GARY E. YARDUMIAN, ESQ. (State Bar No. 131411) PRINDLE, DECKER & AMARO 310 Golden Shore, 4th Floor Long Beach, CA 90801 TELEPHONE NO.: (562) 436-3946 FAX NO.: (562) 495-0564 ATTORNEY FOR (Name): Cross-Defendants		FOR COURT USE ONLY
NAME OF COURT: Superior Court of the State of California STREET ADDRESS: County of Los Angeles MAILING ADDRESS: 111 N. Hill Street CITY AND ZIP CODE: Los Angeles, CA 90012 BRANCH NAME: CENTRAL BRANCH		
PLAINTIFF/PETITIONER: TIG INSURANCE COMPANY		
DEFENDANT/RESPONDENT: GARY SMOLKER, ET AL.		
DEPOSITION SUBPOENA For Personal Appearance and Production of Documents and Things		CASE NUMBER: BC 173952

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name, address, and telephone number of deponent, if known):

PERSON MOST KNOWLEDGEABLE FOR GRACE DAVIDSON
 LOCATED AT 101 E. LINCOLN AVENUE, #240, ANAHEIM, CA (800) 874-0686

1. YOU ARE ORDERED TO APPEAR IN PERSON TO TESTIFY AS A WITNESS in this action at the following date, time, and place:

Date: MAY 8, 2001 Time: 1:30 P.M Address: 310 GOLDEN SHORE, 4TH FLOOR
 LONG BEACH, CALIFORNIA 90801

- As a deponent who is not a natural person, you are ordered to designate one or more persons to testify on your behalf as to the matters described in item 4. (Code Civ. Proc., § 2025, subd. (d)(6).)
 - You are ordered to produce the documents and things described in item 3.
 - ☒ This deposition will be recorded stenographically through the instant visual display of testimony, and by audiotape videotape.
 - This videotape deposition is intended for possible use at trial under Code of Civil Procedure section 2025(u)(4).
2. The personal attendance of the custodian or other qualified witness and the production of the original records are required by this subpoena. The procedure authorized by Evidence Code sections 1560(b), 1561, and 1562 will not be deemed sufficient compliance with this subpoena.
3. The documents and things to be produced and any testing or sampling being sought are described as follows: SEE EXHIBIT "A" ATTACHED TO THIS SUBPOENA AND THE NOTICE OF TAKING DEPOSITION
- Continued on Attachment 3.
4. If the witness is a representative of a business or other entity, the matters upon which the witness is to be examined are described as follows:

Continued on Attachment 4.

5. IF YOU HAVE BEEN SERVED WITH THIS SUBPOENA AS A CUSTODIAN OF CONSUMER OR EMPLOYEE RECORDS UNDER CODE OF CIVIL PROCEDURE SECTION 1985.3 OR 1985.6 AND A MOTION TO QUASH OR AN OBJECTION HAS BEEN SERVED ON YOU, A COURT ORDER OR AGREEMENT OF THE PARTIES, WITNESSES, AND CONSUMER OR EMPLOYEE AFFECTED MUST BE OBTAINED BEFORE YOU ARE REQUIRED TO PRODUCE CONSUMER OR EMPLOYEE RECORDS.
6. At the deposition, you will be asked questions under oath. Questions and answers are recorded stenographically at the deposition; later they are transcribed for possible use at trial. You may read the written record and change any incorrect answers before you sign the deposition. You are entitled to receive witness fees and mileage actually traveled both ways. The money must be paid, at the option of the party giving notice of the deposition, either with service of this subpoena or at the time of the deposition.

DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF FIVE HUNDRED DOLLARS AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.

Date issued: APRIL 20, 2001

GARY E. YARDUMIAN, ESQ. (State Bar No. _____)
 (TYPE OR PRINT NAME)

(SIGNATURE OF PERSON ISSUING SUBPOENA)

ATTORNEY FOR CROSS-DEFENDANTS

(Proof of service on reverse)

(TITLE)



EXHIBIT "A"

1. Any and all sales, supply, marketing and advertising documents from Grace Davidson for "Dri-Die," "Drione," "Dri-Out," and Syloid 244 from 1990 to present.
2. Any and all documents submitted to the Agricultural Commission referencing "Dri-Die," "Drione," "Dri-Out," and Syloid 244 from 1990 to present.
3. Any and all invoices, bills and or statements for the purchase, sale, distribution of "Dri-Die," "Drione," "Dri-Out," and Syloid 244 from 1990 to present.
4. Any and all animal studies, health risk assessments, toxicological data and/or studies mentioning, referencing or referring to "Dri-Die," "Drione," "Dri-Out," and Syloid 244.
5. Any and all pesticide labels, MSDS and/or instruction materials referencing, mentioning "Dri-Die," "Drione," "Dri-Out," and Syloid 244.
6. Any and all research development, toxicology data on "Dri-Die," "Drione," "Dri-Out," and Syloid 244.

1 GARY E. YARDUMIAN, ESQ. (State Bar No. 131411)
2 **LAW OFFICES OF PRINDLE, DECKER & AMARO, LLP**
3 P.O. BOX 22711
4 310 GOLDEN SHORE, 4TH FLOOR
5 LONG BEACH, CA 90801-5511
6 TELEPHONE: (562) 436-3946
7 FAX NO. (562) 495-0564

8 Attorneys for Cross-Defendants, HOME SAVING TERMITE CONTROL, INC., W.F. MORRIS and
9 RIKK THOMPSON

10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF LOS ANGELES**

13 TIG INSURANCE COMPANY, a California
14 Corporation,

15 Plaintiff,

16 vs.

17 GARY SMOLKER, an individual, and ALICE
18 SMOLKER, an individual, and DOES 1-10,
19 inclusive,

20 Defendants.

21 AND ALL RELATED CROSS-ACTIONS.

CASE NO. : BC 173952

Assigned for all purposes to Judge Fruin,
Department 15

**NOTICE OF TAKING DEPOSITION AND
REQUEST FOR PRODUCTION OF
DOCUMENTS OF THE PERSON MOST
KNOWLEDGEABLE FOR GRACE
DAVIDSON**

Date: May 8, 2001

Time: 1:00 p.m.

**Place: PRINDLE, DECKER & AMARO
310 Golden Shore, 4th Floor
Long Beach, CA 90801**

22 TO ALL PARTIES AND TO THEIR RESPECTIVE ATTORNEYS OF RECORD:

23 PLEASE TAKE NOTICE that on May 8, 2001, at 1:00 p.m., at the Law Offices of Prindle, Decker
24 & Amaro, located at 310 Golden Shore, 4th Floor, Long Beach, California, Defendant, Cross-Defendants.
25 HOME SAVING TERMITE CONTROL, INC., W.F. MORRIS and RIKK THOMPSON, will take the
26 deposition of the third party witness who is the "PERSON MOST KNOWLEDGEABLE" for GRACE
27 DAVIDSON.

28 The person or persons designated for the deposition by GRACE DAVIDSON should be the
person(s) most knowledgeable concerning the following:

1. Regarding sales, supplies, marketing and advertising for Grace Davidson for "Dri-Die," "Drione," "Dri-Out," and Syloid 244.
2. Regarding documents submitted to the Agricultural Commission referencing "Dri-Die," "Drione," "Dri-Out," and Syloid 244.
3. Regarding invoices, bills, and/or purchases, sales, distributions of "Dri-Die," "Drione," "Dri-Out," and Syloid 244.
4. Regarding animal studies, health risk assessments, toxicological data, studies referencing or referring to "Dri-Die," "Drione," "Dri-Out," and Syloid 244.
5. Regarding pesticide labels, MSDs and/or instruction materials referencing or mentioning "Dri-Die," "Drione," "Dri-Out," and Syloid 244.
6. Regarding research developments and/or toxicology data on "Dri-Die," "Drione," "Dri-Out," and Syloid 244.

This deposition will be taken before a Notary Public in and for the State of California, or other such officer authorized to administer oaths who may be present at said time and place. Said deposition will continue from day to day, excluding Sundays and holidays, until completed.

PLEASE TAKE FURTHER NOTICE that deponent is requested to produce at said time and place of his/her respective deposition, the following documents, papers, and things for copying and examination, pursuant to Code of Civil Procedure § 2025(h)(1). The above-mentioned documents are listed in the attached Exhibit "A."

DATED: April 20, 2001

PRINDLE, DECKER & AMARO

By: 

GARY E. YARDUMIAN
Attorneys for Cross-Defendant, HOME SAVING
TERMITE CONTROL, INC., W.F. MORRIS and
RIKK THOMPSON

EXHIBIT "A"

1. Any and all sales, supply, marketing and advertising documents from Grace Davidson for "Dri-Die," "Drione," "Dri-Out," and Syloid 244 from 1990 to present.
2. Any and all documents submitted to the Agricultural Commission referencing "Dri-Die," "Drione," "Dri-Out," and Syloid 244 from 1990 to present.
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5. Any and all pesticide labels, MSDS and/or instruction materials referencing, mentioning "Dri-Die," "Drione," "Dri-Out," and Syloid 244.
6. Any and all research development, toxicology data on "Dri-Die," "Drione," "Dri-Out," and Syloid 244.

PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

) ss.
)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) and am not a party to the within action; my business address is 310 Golden Shore, 4th Floor, Long Beach, California 90802.

On April 20, 2001, I served the foregoing document described as **NOTICE OF TAKING DEPOSITION AND REQUEST FOR PRODUCTION OF DOCUMENTS OF THE PERSON MOST KNOWLEDGEABLE FOR GRACE DAVIDSON** and **DEPOSITION SUBPOENA FOR PERSONAL APPEARANCE** on all interested parties in this action, by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Long Beach, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

XX (By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Long Beach, California.

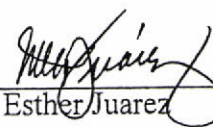
(By Fax) I caused such document to be faxed at Long Beach, California, from Fax No. (562) 495-0564 to Fax No. _____ directed to fax numbers listed below. The facsimile machine I used complied with Rule 2003(3) and no error was reported by the machine. Pursuant to Rule 2005(I), I caused the machine to print a record of the transmission, a copy of which is attached to this declaration.

(By Personal Service) I caused such envelope to be delivered by hand to the addressee(s). Gary S. Smolker, Esq., LAW OFFICE OF SMOLKER & GRAHAM, 4720 Lincoln Blvd., Ste. 280, Marina Del Rey, CA 90292

XX (State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on April 20, 2001, at Long Beach, California.


M. Esther Juarez

SERVICE LIST

TIG INSURANCE COMPANY vs. GARY SMOLKER, et al.
LASC, Central District, Case No. BC 173 952

GARY S. SMOLKER

Gary S. Smolker, Esq.
 Alice M. Graham, Esq.
 LAW OFFICE OF SMOLKER & GRAHAM
 4720 Lincoln Blvd., Ste. 280
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DENNIS A. BABBITTS.COREGIS GROUP, INC.,

COREGIS INS. CO., DEAN & ASSOCIATES
and CALIFORNIA INSURANCE COMPANY
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TRUCK INSURANCE EXCHANGE/
UNDERWRITERS ASSOCIATION
FARMERS GROUP, INC., FARMERS
INSURANCE GROUP OF COMPANIES

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TIG INSURANCE COMPANY

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W.R. GRACE & CO.: GRACE DIVISION:

ALBERT COSTELLO and JAMES R. HYDE
 Bryan Porter, Esq.
 Rosemarie S. Lewis, Esq.
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SERVICE LIST

TIG INSURANCE COMPANY vs. GARY SMOLKER, et al.
LASC, Central District, Case No. BC 173 952

ATTORNEYS FOR DEFENDANT/CROSS-
COMPLAINANTS, JAMES HOLLAND and
JULIE HOLLAND

GIBBS, GIDEN, LOCHER & TURNER
2029 Century Park East, 34th Floor
Los Angeles, CA 90067-3039

Attention: Michael B. Geibel
Telephone: (310) 552-3400
Fax No.: (310) 552-0805

ATTORNEYS FOR CAROL D. KAY,
TRUSTEE OF THE CAROL D. KAY 1989
TRUST

FONDA, HILBERMAN & FRASER, L.L.P.
1888 Century Park East, Suite 1777
Los Angeles, CA 90067

Attention: Cecille L. Hester, Esq.
Telephone: (310) 553-3320
Fax No.: (310) 553-4232

COUNSEL FOR PACIFIC VILLAS
HOMEOWNER'S ASSOCIATION

MURAWSKI & GREY
11755 Wilshire Blvd., Suite 1400
Los Angeles, CA 90025

Attention: David M. Grey, Esq.
Telephone: (310) 477-5455
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ATTORNEYS FOR INTERINSURANCE
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LLP
221 North Figueroa Street, Suite 1200
Los Angeles, CA 90012-2601

Attention: Richard B. Wolf, Esq.
Telephone: (213) 250-1800

982(a)(15.3)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): Gary E. Yardumian, Esq. PRINDLE, DECKER & AMARO 310 Golden Shore, 4th Floor Long Beach, California 90801 TELEPHONE NO.: (562) 436-3946 FAX NO.: (562) 495-0564 ATTORNEY FOR (Name): Cross-Defendants		FOR COURT USE ONLY
NAME OF COURT: SUPERIOR COURT OF THE STATE OF CALIFORNIA STREET ADDRESS: COUNTY OF LOS ANGELES MAILING ADDRESS: 111 N. Hill Street CITY AND ZIP CODE: Los Angeles, CA BRANCH NAME: CENTRAL BRANCH		
PLAINTIFF/PETITIONER: TIG INSURANCE COMPANY DEFENDANT/RESPONDENT: GARY SMOLKER, et al.		
AMENDED DEPOSITION SUBPOENA For Personal Appearance		
		CASE NUMBER: BC 173952

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name, address, and telephone number of deponent, if known):

GREG RANOCCHIA, Grace Davidson (800) 874-0686
 Located at 101 E. Lincoln Avenue, #240, Anaheim, CA

1. YOU ARE ORDERED TO APPEAR IN PERSON TO TESTIFY AS A WITNESS in this action at the following time and place:

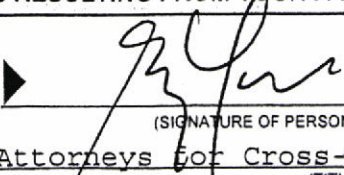
Date: 5/8/01 Time: 10:00 a.m. Address: Prindle, Decker & Amaro
 310 Golden Shore, 4th Fl., Long Beach, CA

- As a deponent who is not a natural person, you are ordered to designate one or more persons to testify on your behalf as to the matters described in item 2. (Code Civ. Proc., § 2025, subd. (d)(6).)
 - ☒ This deposition will be recorded stenographically through the instant visual display of testimony, and by audiotape videotape.
 - This videotape deposition is intended for possible use at trial under Code of Civil Procedure section 2025(u)(4).
2. If the witness is a representative of a business or other entity, the matters upon which the witness is to be examined are as follows:
3. At the deposition, you will be asked questions under oath. Questions and answers are recorded stenographically at the deposition; later they are transcribed for possible use at trial. You may read the written record and change any incorrect answers before you sign the deposition. You are entitled to receive witness fees and mileage actually traveled both ways. The money must be paid, at the option of the party giving notice of the deposition, either with service of this subpoena or at the time of the deposition.

DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF FIVE HUNDRED DOLLARS AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.

Date issued: April 19, 2001

Gary E. Yardumian, Esq.
 (TYPE OR PRINT NAME)


 (SIGNATURE OF PERSON ISSUING SUBPOENA)
 Attorneys for Cross-Defendants
 (TITLE)

(Proof of service on reverse)

DEPOSITION SUBPOENA
 FOR PERSONAL APPEARANCE

1 GARY E. YARDUMIAN, ESQ. (State Bar No. 131411)
2 **LAW OFFICES OF PRINDLE, DECKER & AMARO, LLP**
3 P.O. BOX 22711
4 310 GOLDEN SHORE, 4TH FLOOR
5 LONG BEACH, CA 90801-5511
6 TELEPHONE: (562) 436-3946
7 FAX NO. (562) 495-0564

8 Attorneys for Cross-Defendants, HOME SAVING TERMITE CONTROL, INC., W.F. MORRIS and
9 RIKK THOMPSON

10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF LOS ANGELES**

13 TIG INSURANCE COMPANY, a California
14 Corporation,

15 Plaintiff,

16 vs.

17 GARY SMOLKER, an individual, and ALICE
18 SMOLKER, an individual, and DOES 1-10,
19 inclusive,

20 Defendants.

21 AND ALL RELATED CROSS-ACTIONS.

CASE NO. : BC 173952

Assigned for all purposes to Judge Dzintra
Janavs, Department 15

**NOTICE OF TAKING DEPOSITION OF
WITNESS, GREG RANOCCHIA**

Date: May 8, 2001

Time: 10:00 a.m.

**Place: PRINDLE, DECKER & AMARO
310 Golden Shore, 4th Floor
Long Beach, CA 90801**

TO ALL PARTIES HEREIN AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on **May 8, 2001**, at 10:00 a.m., at the Law Offices of Prindle.

Decker & Amaro, located at 310 Golden Shore, Fourth Floor, Long Beach, California, Cross-
Defendants, HOME SAVING TERMITE CONTROL, INC., W.F. MORRIS and RIKK THOMPSON.
herein will take the oral deposition of **Witness, Greg Ranocchia**, before a notary public authorized to
administer oaths in the State of California who is present at the specified time and place.

If said deposition is not completed on said dates, the taking thereof will be continued from day
to day, Sundays and holidays excluded, until completed.

///

1 Defendant hereby demands to be informed by Witness of the need of an interpreter and the
2 appropriate language/dialect of the same for the deposition itself within five (5) days prior to the
3 proceeding.

4 DATED: April 19, 2001

5 PRINDLE, DECKER & AMARO

6
7 By: 

8 GARY E. YARDUMIAN
9 Attorneys for Cross-Defendant, HOME SAVING
10 TERMITE CONTROL, INC., W.F. MORRIS and
11 RIKK THOMPSON
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PROOF OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) and am not a party to the within action; my business address is 310 Golden Shore, 4th Floor, Long Beach, California 90802.

On April 19, 2001, I served the foregoing document described as **NOTICE OF TAKING DEPOSITION OF WITNESS, GREG RANOCCHIA; DEPOSITION SUBPOENA FOR PERSONAL APPEARANCE** on all interested parties in this action, by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Long Beach, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

xx (By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Long Beach, California.

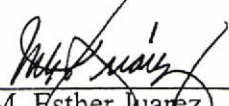
(By Fax) I caused such document to be faxed at Long Beach, California, from Fax No.(562) 495-0564 to Fax No. _ directed to fax numbers listed below. The facsimile machine I used complied with Rule 2003(3) and no error was reported by the machine. Pursuant to Rule 2005(I), I caused the machine to print a record of the transmission, a copy of which is attached to this declaration.

(By Personal Service) I caused such envelope to be delivered by hand to the addressee(s). Gary S. Smolker, Esq., LAW OFFICE OF SMOLKER & GRAHAM, 4720 Lincoln Blvd., Ste. 280, Marina Del Rey, CA 90292

xx (State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on April 19, 2001, at Long Beach, California.


M. Esther Suarez

SERVICE LIST

TIG INSURANCE COMPANY vs. GARY SMOLKER, et al.
LASC, Central District, Case No. BC 173 952

GARY S. SMOLKER

Gary S. Smolker, Esq.
 Alice M. Graham, Esq.
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 4720 Lincoln Blvd., Ste. 280
 Marina Del Rey, CA 90292
 (310) 574-9880
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DENNIS A. BABBITTS, COREGIS GROUP, INC.,

COREGIS INS. CO., DEAN & ASSOCIATES
and CALIFORNIA INSURANCE COMPANY
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 Robert D. Hoffman, Esq.
CHARLSTON, REVICH & WILLIAMS LLP
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SERVICE LIST

TIG INSURANCE COMPANY vs. GARY SMOLKER, et al.
LASC, Central District, Case No. BC 173 952

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COMPLAINANTS, JAMES HOLLAND and
JULIE HOLLAND

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2029 Century Park East, 34th Floor
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Attention: Michael B. Geibel
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TRUSTEE OF THE CAROL D. KAY 1989
TRUST

FONDA, HILBERMAN & FRASER, L.L.P.
1888 Century Park East, Suite 1777
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Attention: Cecille L. Hester, Esq.
Telephone: (310) 553-3320
Fax No.: (310) 553-4232

COUNSEL FOR PACIFIC VILLAS
HOMEOWNER'S ASSOCIATION

MURAWSKI & GREY
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Attention: Richard B. Wolf, Esq.
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5 LONG BEACH, CA 90801-5511
6 TELEPHONE: (562) 436-3946
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8 Attorneys for Cross-Defendants, HOME SAVING TERMITE CONTROL, INC., W.F. MORRIS and
9 RIKK THOMPSON

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

TIG INSURANCE COMPANY, a California
Corporation,

Plaintiff,

vs.

GARY SMOLKER, an individual, and ALICE
SMOLKER, an individual, and DOES 1-10,
inclusive,

Defendants.

AND ALL RELATED CROSS-ACTIONS.

CASE NO. : BC 173952

Assigned for all purposes to Judge Fruin,
Department 15

**NOTICE OF TAKING DEPOSITION AND
REQUEST FOR PRODUCTION OF
DOCUMENTS OF THE PERSON MOST
KNOWLEDGEABLE FOR GRACE
DAVIDSON**

Date: May 8, 2001

Time: 1:00 p.m.

**Place: PRINDLE, DECKER & AMARO
310 Golden Shore, 4th Floor
Long Beach, CA 90801**

TO ALL PARTIES AND TO THEIR RESPECTIVE ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on May 8, 2001, at 1:00 p.m., at the Law Offices of Prindle, Decker
& Amaro, located at 310 Golden Shore, 4th Floor, Long Beach, California, Defendant, Cross-Defendants
HOME SAVING TERMITE CONTROL, INC., W.F. MORRIS and RIKK THOMPSON, will take the
deposition of the third party witness who is the "PERSON MOST KNOWLEDGEABLE" for GRACE
DAVIDSON.

The person or persons designated for the deposition by GRACE DAVIDSON should be the
person(s) most knowledgeable concerning the following:

1. Regarding sales, supplies, marketing and advertising for Grace Davidson for "Dri-Die," "Drione," "Dri-Out," and Syloid 244.
2. Regarding documents submitted to the Agricultural Commission referencing "Dri-Die," "Drione," "Dri-Out," and Syloid 244.
3. Regarding invoices, bills, and/or purchases, sales, distributions of "Dri-Die," "Drione," "Dri-Out," and Syloid 244.
4. Regarding animal studies, health risk assessments, toxicological data, studies referencing or referring to "Dri-Die," "Drione," "Dri-Out," and Syloid 244.
5. Regarding pesticide labels, MSDs and/or instruction materials referencing or mentioning "Dri-Die," "Drione," "Dri-Out," and Syloid 244.
6. Regarding research developments and/or toxicology data on "Dri-Die," "Drione," "Dri-Out," and Syloid 244.

This deposition will be taken before a Notary Public in and for the State of California, or other such officer authorized to administer oaths who may be present at said time and place. Said deposition will continue from day to day, excluding Sundays and holidays, until completed.

PLEASE TAKE FURTHER NOTICE that deponent is requested to produce at said time and place of his/her respective deposition, the following documents, papers, and things for copying and examination, pursuant to Code of Civil Procedure § 2025(h)(1). The above-mentioned documents are listed in the attached Exhibit "A."

DATED: April 20, 2001

PRINDLE, DECKER & AMARO

By: 

GARY E. YARDUMIAN
Attorneys for Cross-Defendant, HOME SAVING
TERMITE CONTROL, INC., W.F. MORRIS and
RIKK THOMPSON

EXHIBIT "A"

1. Any and all sales, supply, marketing and advertising documents from Grace Davidson for "Dri-Die," "Drione," "Dri-Out," and Syloid 244 from 1990 to present.
2. Any and all documents submitted to the Agricultural Commission referencing "Dri-Die," "Drione," "Dri-Out," and Syloid 244 from 1990 to present.
3. Any and all invoices, bills and or statements for the purchase, sale, distribution of "Dri-Die," "Drione," "Dri-Out," and Syloid 244 from 1990 to present.
4. Any and all animal studies, health risk assessments, toxicological data and/or studies mentioning, referencing or referring to "Dri-Die," "Drione," "Dri-Out," and Syloid 244.
5. Any and all pesticide labels, MSDS and/or instruction materials referencing, mentioning "Dri-Die," "Drione," "Dri-Out," and Syloid 244.
6. Any and all research development, toxicology data on "Dri-Die," "Drione," "Dri-Out," and Syloid 244.

PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

) ss.

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) and am not a party to the within action; my business address is 310 Golden Shore, 4th Floor, Long Beach, California 90802.

On April 20, 2001, I served the foregoing document described as **NOTICE OF TAKING DEPOSITION AND REQUEST FOR PRODUCTION OF DOCUMENTS OF THE PERSON MOST KNOWLEDGEABLE FOR GRACE DAVIDSON** and **DEPOSITION SUBPOENA FOR PERSONAL APPEARANCE** on all interested parties in this action, by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Long Beach, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

xx (By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Long Beach, California.

(By Fax) I caused such document to be faxed at Long Beach, California, from Fax No. (562) 495-0564 to Fax No. _____ directed to fax numbers listed below. The facsimile machine I used complied with Rule 2003(3) and no error was reported by the machine. Pursuant to Rule 2005(I), I caused the machine to print a record of the transmission, a copy of which is attached to this declaration.

(By Personal Service) I caused such envelope to be delivered by hand to the addressee(s). Gary S. Smolker, Esq., LAW OFFICE OF SMOLKER & GRAHAM, 4720 Lincoln Blvd., Ste. 280, Marina Del Rey, CA 90292

xx (State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on April 20, 2001, at Long Beach, California.


M. Esther Juarez

SERVICE LIST

TIG INSURANCE COMPANY vs. GARY SMOLKER, et al.
LASC, Central District, Case No. BC 173 952

GARY S. SMOLKER

Gary S. Smolker, Esq.
 Alice M. Graham, Esq.
 LAW OFFICE OF SMOLKER & GRAHAM
 4720 Lincoln Blvd., Ste. 280
 Marina Del Rey, CA 90292
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 (310) 574-9883 (fax)

DENNIS A. BABBITTS.COREGIS GROUP, INC.

COREGIS INS. CO., DEAN & ASSOCIATES
and CALIFORNIA INSURANCE COMPANY
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 Robert D. Hoffman, Esq.
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SERVICE LIST

TIG INSURANCE COMPANY vs. GARY SMOLKER, et al.
LASC, Central District, Case No. BC 173 952

ATTORNEYS FOR DEFENDANT/CROSS-
COMPLAINANTS, JAMES HOLLAND and
JULIE HOLLAND

GIBBS, GIDEN, LOCHER & TURNER
2029 Century Park East, 34th Floor
Los Angeles, CA 90067-3039

Attention: Michael B. Geibel
Telephone: (310) 552-3400
Fax No.: (310) 552-0805

ATTORNEYS FOR CAROL D. KAY,
TRUSTEE OF THE CAROL D. KAY 1989
TRUST

FONDA, HILBERMAN & FRASER, L.L.P.
1888 Century Park East, Suite 1777
Los Angeles, CA 90067

Attention: Cecille L. Hester, Esq.
Telephone: (310) 553-3320
Fax No.: (310) 553-4232

COUNSEL FOR PACIFIC VILLAS
HOMEOWNER'S ASSOCIATION

MURAWSKI & GREY
11755 Wilshire Blvd., Suite 1400
Los Angeles, CA 90025

Attention: David M. Grey, Esq.
Telephone: (310) 477-5455
Fax No.: (310) 479-6469

ATTORNEYS FOR INTERINSURANCE
EXCHANGE OF AUTOMOBILE CLUB

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Attention: Richard B. Wolf, Esq.
Telephone: (213) 250-1800

1 Defendant hereby demands to be informed by Witness of the need of an interpreter and the
2 appropriate language/dialect of the same for the deposition itself within five (5) days prior to the
3 proceeding.

4 DATED: April 19, 2001

PRINDLE, DECKER & AMARO

By: 

GARY E. YARDUMIAN
Attorneys for Cross-Defendant, HOME SAVING
TERMITE CONTROL, INC., W.F. MORRIS and
RIKK THOMPSON

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
 COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) and am not a party to the within action; my business address is 310 Golden Shore, 4th Floor, Long Beach, California 90802.

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xx (By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Long Beach, California.

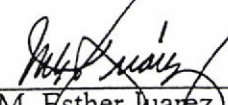
(By Fax) I caused such document to be faxed at Long Beach, California, from Fax No.(562) 495-0564 to Fax No. _ directed to fax numbers listed below. The facsimile machine I used complied with Rule 2003(3) and no error was reported by the machine. Pursuant to Rule 2005(I), I caused the machine to print a record of the transmission, a copy of which is attached to this declaration.

(By Personal Service) I caused such envelope to be delivered by hand to the addressee(s). Gary S. Smolker, Esq., LAW OFFICE OF SMOLKER & GRAHAM, 4720 Lincoln Blvd., Ste. 280, Marina Del Rey, CA 90292

xx (State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on April 19, 2001, at Long Beach, California.


 M. Esther Juarez

SERVICE LIST

TIG INSURANCE COMPANY vs. GARY SMOLKER, et al.
LASC, Central District, Case No. BC 173 952

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SERVICE LIST

TIG INSURANCE COMPANY vs. GARY SMOLKER, et al.
LASC, Central District, Case No. BC 173 952

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CERTIFICATE OF SERVICE

I, SHERRY RUGGIERO FALLON, certify that I am not less than 18 years of age; that service of this notice and a copy of the motion was made May 1, 2001 in accordance with BR 7004 on:

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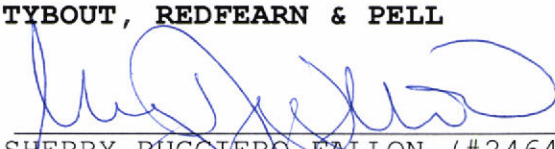
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